



April 16, 2009

Charles L. A. Terreni, Esquire
Chief Clerk/Administrator
The Public Service Commission of South Carolina
P. O. Drawer 11649
Columbia, South Carolina 29211

RE: Public Service Commission of South Carolina
Motion for Partial Waiver of Rules 103-331 and 103-336

Dear Mr. Terreni:

Enclosed for filing is Progress Energy Carolinas, Inc.'s ("PEC") Motion For Partial Waiver of Rules 103-331 and 103-336.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Len S. Anthony', written over a horizontal line.

Len S. Anthony
General Counsel – Progress Energy Carolinas, Inc.

Attachment

cc: Office of Regulatory Staff

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-____-E

Carolina Power & Light Company,)	MOTION FOR PARTIAL WAIVER
d/b/a/Progress Energy Carolinas, Inc.)	OF COMMISSION RULES
)	103-331 AND 103-336

Pursuant to the Public Service Commission of South Carolina's ("the Commission") Rules 103-301(3) and 103-800(B), Progress Energy Carolinas, Inc. ("PEC") hereby respectfully requests a waiver of those portions of Rule 103-331 that pertain to deposit requirements for new and existing nonresidential customers, and a partial waiver of Rule 103-336 concerning Deposit Retention.

Rule 103-331 as it stands precludes PEC from requiring an existing, unsecured customer to pay a deposit unless that customer's payment history to PEC includes two consecutive 30-day arrears or more than two nonconsecutive 30-day arrears in the past 24 months (Rule 103-331(1)); or the customer is presently delinquent; or the customer has had service terminated for non-pay or fraudulent use. Rule 103-336 as it stands requires PEC to refund a deposit after two years based solely on whether or not the customer has had two consecutive 30-day arrears or more than two nonconsecutive 30-day arrears in the past 24 months. PEC seeks a waiver of certain provisions of these Rules so as to allow PEC to request a deposit from an existing unsecured nonresidential customer or increase the deposit for an existing nonresidential customer in the event the customer's (or its parent company's) credit rating or audited financial statements indicate that the

customer is not financially solvent, or the customer adds load or otherwise changes its operation in such a way that the existing deposit is inadequate; and to retain that deposit for more than two years if the customer's credit rating or audited financial statements indicate that the customer or its parent company is not financially solvent, even if the customer's pay record conforms to the standards in the presently-effective Rule 103-336. Although these Rules would appear to apply to both residential and nonresidential customers, PEC seeks this waiver only for nonresidential customers; PEC does not require deposits from residential customers unless the conditions in Rule 103-331 as it presently stands are met, and PEC would continue to refund deposits for residential customers after two years based on their payment history, in accordance with the existing Rule 103-336.

Following is a listing of the criteria which PEC would use to determine the need for a deposit and the justification for a refund of that deposit:

TABLE 1: CRITERIA FOR COLLECTING OR UPGRADING DEPOSITS FROM NEW OR EXISTING NONRESIDENTIAL CUSTOMERS

CATEGORY OF CUSTOMER	COLLECT DEPOSIT IF:
Nonresidential customer, deposit less than \$5000	Poor pay (see note below) and/or Experian Commercial Credit score 70 or less
Privately-held company, aggregate deposit \$5000 or greater	Poor pay and/or audited financials indicate insolvency ¹
Publicly-held company	Poor pay and/or Moody's rating less than Ba2 or S&P rating less than BB

NOTE: "poor pay" is defined as 2 or more consecutive 30-day arrears or more than 2 nonconsecutive 30-day arrears in past 24 months

¹ Decision is based on review of all readily available financial information including, but not limited to: net income; gross profit margin; cash flow; availability of financing; EBIT/Interest expense; total debt/total capital; public debt ratings and outlook forecasts from major credit data providers, such as Moody's and Standard & Poor's; information from credit rating agencies such as Experian Commercial regarding payment trends with other creditors and suppliers; business profiles and industry analysis; and audited financial information provided on request by the customer.

TABLE 2: CRITERIA FOR REFUNDING DEPOSITS AFTER TWO YEARS

CATEGORY OF CUSTOMER	REFUND DEPOSIT IF:
Nonresidential customer, deposit less than \$2500	Good pay (see note below)
Nonresidential customer, deposit \$2501-\$5000	Good pay and Experian Commercial Credit score 71-100
Privately-held company, aggregate deposit \$5000 or greater	Good pay and audited financials indicate solvency
Publicly-held company	Good pay and Moody's rating of at least Ba2 or S&P rating of at least BB

NOTE: "Good pay" is defined as no more than two 30-day arrears in the past 24 months (cannot be consecutive months)

One obvious factor motivating PEC to seek this waiver at this time is the nation's economic situation, which poses an ongoing threat to the financial solvency of many businesses and industries, including national chains and some of PEC's largest customers. PEC's uncollectibles have been increasing annually for the last four years, a phenomenon tied, to some extent, to the state of the economy. Another factor is the growing availability of sophisticated credit tracking tools offered by credit reporting agencies such as Experian and Equifax which allow creditors like PEC quick and easy access to an index of the financial solvency of businesses and their parent companies, a quicker and less invasive process than the traditional "credit check." Use of these new resources has brought to light the fact that while many local franchises and subsidiaries of regional or national chains pay their bills to PEC on time and otherwise meet the criteria of the existing Rule 103-331, their parent companies in some cases have credit issues or are publicly reported by Wall Street analysts to be heading inexorably toward bankruptcy.

Two prime examples are Pilgrim's Pride and Winn-Dixie. Several years ago PEC was able to secure deposits on all of the Winn-Dixie grocery stores in its North Carolina service territory, most of which had good payment histories with PEC, after it was widely recognized that the parent company was in deteriorating financial health. After Winn-Dixie went bankrupt and all the stores closed, the deposits PEC had been able to secure saved PEC and its other customers an estimated \$262,000. On October 23, 2008, PEC filed a motion with this Commission seeking a temporary waiver of Rule 103-331 for Pilgrim's Pride Corporation, which was widely reported in news media (including a feature article in the Wall Street Journal) to be in severe financial distress and headed for bankruptcy. Pilgrim's Pride had a facility in Sumter, South Carolina without an active deposit; that facility had a pay record which, under the existing criteria of Rule 103-331, would have precluded PEC from asking for a deposit. Unfortunately, Pilgrim's Pride filed for bankruptcy (after first representing to the Commission that it was not near the brink of bankruptcy) before PEC's motion was heard, and as a result, PEC is presently barred from collecting a significant debt².

Neighboring states' utility laws and rules give utilities some latitude in seeking deposits from existing customers. Alabama's General Rule 8 allows a utility to require, "upon five (5) days' written notice, a deposit...from a customer whose account is not in good standing, from a customer whose deposit has been refunded or found to be inadequate, or if a customer's usage increases sufficiently to warrant an additional

² In its March 6, 2009 Order No. 2009-31 in the Pilgrim's Pride docket (No. 2008-400-E) the Commission said in part: "We are aware that there would be some legal argument as to whether the utility would be permitted to keep any portion of such a deposit, or instead ordered to disgorge the payment under the bankruptcy preference rules (11 U.S.C. Section 547)." Under the federal bankruptcy statutes PEC is allowed to apply pre-petition deposits against pre-petition debts, regardless of when the deposit was satisfied. The bankrupt Debtor in Possession (DIP) is treated as a separate legal entity, and PEC is authorized to seek a separate security deposit for the DIP.

deposit.” The rule specifically authorizes an additional deposit from a telephone customer “when excessive toll occurs and there is a known credit risk...” North Carolina Utilities Commission Rule R12-3(c) specifies that “A customer may be required to reestablish his credit...in case the conditions of service or basis on which credit was originally established have materially changed.” Florida’s Commission Rule 25-6.097(3) states that “A utility may require, upon reasonable written notice of not less than thirty (30) days, a new deposit, where previously waived or returned, or additional deposit, in order to secure payment of current bills.” Utility rules in Virginia and Georgia do not specifically address (and thus do not preclude) deposits for existing customers based on financial solvency. Utilities in those states have thus had latitude to seek such deposits, including collection of a deposit from a Pilgrim’s Pride plant in Virginia before that company’s bankruptcy.

Winn-Dixie and Pilgrim’s Pride are perhaps the most dramatic examples of the situation that PEC is facing with increasing regularity as the economic downturn takes its toll on corporations that once seemed financially unassailable, but they are not the whole story. Nine major customers (including Pilgrim’s Pride) in PEC’s South Carolina jurisdiction have filed for Chapter 11 bankruptcy protection in the last 18 months, resulting in losses to PEC’s ratepayers in excess of \$1.3 million. Each of them had satisfactory pay records with PEC and therefore did not satisfy the deposit criteria of Rule 103-331, but in each case they were shown by external credit rating agencies such as Standard and Poor’s and Moody’s to have deteriorating financial health.

This Commission has recognized this situation in the past. In June of 2004 in Docket No. 2004-169-E Duke Power petitioned the Commission for a similar partial waiver of Rule 103-331 for virtually the same reasons that now motivate PEC to seek this waiver. The Commission approved the waiver on an experimental basis (Order No. 2004-417 dated October 1, 2004), and on October 31, 2005 in Order No. 2005-600 the Commission granted the waiver on a continuing, non-experimental basis.

Based on the above information, PEC hereby asks the Commission to grant PEC a similar partial waiver of Rule 103-331 and thereby allow PEC to assess existing nonresidential customers a deposit (or upgrade a deposit if changes by the customer render the deposit insufficient) based not only on the specific customer's pay history with PEC, but on the criteria set forth in Table 1 above.

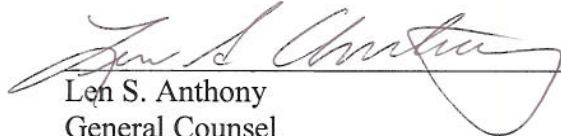
Acceptable forms of security would include a cash deposit, standby irrevocable letter of credit, surety bond, or guarantee from an investment-rated parent company. PEC would also be agreeable to a deposit based on one month's usage if the customer agrees to pay monthly electric bills by means of bank draft.

PEC also seeks partial waiver of Rule 103-336, which presently requires a complete refund of the customer's deposit with interest after two years unless the customer has had two consecutive 30-day arrears, or more than two non-consecutive 30-day arrears, in the past 24 months. PEC proposes to retain nonresidential customers' deposits until the customer meets the criteria set forth in Table 2 above, which for a customer with a deposit in excess of \$2500 includes the present Rule 103-336 payment history criteria and evidence that the customer or its parent company are no longer financially insolvent.

PEC therefore requests the Commission grant partial waivers to Rules 103-331 and 103-336.

Respectfully submitted this the 16th day of April, 2009.

PROGRESS ENERGY CAROLINAS, INC.

A handwritten signature in dark ink, appearing to read "Len S. Anthony", is written over a horizontal line.

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